

and the court, therefore, would have approved, would the mere circumstance of the trustee's neglect to report it, make him liable for any loss that should ensue? But little light is thrown upon this question by the opinion of the Court of Appeals. They say, "nor does it appear to us, satisfactorily, if the same had been transferred merely as a security, whether any act of Wayman for which he could be held accountable, conduced to the loss consequent upon the failure of that institution." 5 Gill, 354. From this we may infer, that if the transfer had been made as a security merely, Wayman would not be liable for the loss unless brought about by some interposition or agency of his, which is not pretended, but if *transferred as payment*, his liability for the loss is left by the opinion in considerable obscurity. It seems to have been considered important to ascertain for what purpose the transfer was made, but as to what liability Wayman would incur in consequence of having taken the transfer in payment, no further opinion is intimated.

It would, at the first view, appear to be hard that Wayman, having taken stocks esteemed perfectly good in the market, and such as the court, in all probability, would have approved as an investment, should, from his neglect alone to communicate the transaction to the court, be so severely punished for the consequence which may probably have resulted from his delay. But upon a further consideration, it will be found, that other facts have an important bearing upon the question.

The portion of the trust fund consisting of the abstracted stock, Wayman alleges, "he had nothing to do with," by which he seems to mean that it was the part intrusted to the supervision and management of his co-trustee, Stockett. But, notwithstanding this agreement for division of labor, if any fact endangering the safety of this fund came to his knowledge, he was bound to see to its security, and communicate the fact to the court and his co-trustee, and not, as he in fact did, take the management of it into his own hands, exercise his own judgment as to the value of the property transferred in payment, and conceal the whole matter from his co-trustee and the court. The court had, at one time, sanctioned the purchase of the Farmers and Mer-